Bank Lawyer's Blog

Commentary on Banking Law

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October 06, 2010

Misdirection

While the Department of Justice announced today that it will investigate the foreclosure practices of some of the big residential mortgage loan servicers arising from their alleged "robo-signing" of documents that were not actually reviewed by the person signatory, Housing Wire publisher Paul Jackson asks a critical question: So what?

> ***But in the end, am I the only one asking: who really cares? Does any of this make it more likely that a borrower will suddenly be able to afford their mortgage? Isn't that what really matters?***
>
> ***What really should matter is this: as a nation, we have lost at least $2 trillion in wealth thanks to the economic downturn, led by an absolute collapse of our housing and mortgage markets. It's a collapse we have all yet to recover from, as a host of well-intentioned but ill-fated policies have done nothing except prolong pain — not only for banks, who are still playing hide-and-seek with bad assets on their balance sheets, but also for borrowers, who are being lied to by our government and by the very consumer advocates who claim to wish to help them.***

Read the whole rant. You'll be glad you did (assuming you're a banker and not a bank-hater).

Of course, our fearless leaders in Congress understand that at a juncture where many community banks are under the gun from so many directions, the economy is wallowing in the doldrums, and joblessness continues to impede a recovery, what one of this country's top priorities has got to be is the expansion of the Community Reinvestment Act and the toughening of its standards (*paid subscription required*).

> ***House Financial Services Committee Democratic leaders introduced a bill [September 29, 2020] to expand the Community Reinvestment Act and impose stricter standards on banks.***
>
> ***The bill from Rep. Luis Gutierrez would make it tougher for banks to receive an "outstanding" rating on their CRA exams, add a new "sufficient" rating and require bank affiliates and subsidiaries to be included in evaluations.***
>
> ***"This is an important first step on the road to reforming and modernizing the CRA to better meets***

R E C

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the needs of our communities and address the new financial marketplace," said the Illinois Democrat in a press release. "We are laying the groundwork for next year, identifying priorities, and evaluating what we have been able to fix and what remains to be fixed in our financial markets."

Yep, no doubt about it: you've got your "priorities" straight, Luis.

09:27 PM in CRA, Employment, Federal Legislation, Lending, Litigation, Mortgage Banking, The Economy | Permalink | TrackBack (0)

October 05, 2010

The Smaller They Are, The Harder They Fall

"Community banks are the lifeblood of our nation's financial system, supplying much-needed credit to countless individuals, small businesses, nonprofit organizations, and other entities in large and small towns around the country."-- Sheila Bair, May 29, 2009

A thoughtful piece by Randall Smith and Robin Seidel in last week's The Wall Street Journal entitled "Banks Keep Failing, No End in Sight" finally made the front section of today's The Dallas Morning News retitled "Broke-bank Mountain." I guess that proves that either the story has legs or somebody needed an excuse to demonstrate his or her cleverness as a headline writer. My guess is that it's more the former than the latter.

The authors cite one bank analyst who estimates that the number of banks that will be left standing when the dust settles will be closer to 5,000 than the 6,000 we've been heard from other sources. However, it's the exact number that was estimated by the chairman of an old-line community bank in the mid-west in a recent e-mail to me. Whichever number turns out to be accurate, and lot more banks are going to fail or be merged out of existence in the coming years. That fact has troubling consequences for our economy, as Smith and Seidel articulate.

> ***The largest number of bank failures in nearly 20 years has eliminated jobs, accelerated a drought in lending and left the industry's survivors with more power to squeeze customers.***
>
> ***[...]***
>
> ***The upside of failures is that they can represent a healthy cleansing of a sector that grew too fast, with bank assets more than doubling to $13.8 trillion in the decade that ended in 2008. Many banks that failed were opportunistic latecomers. Of the failed banks since February 2007, 75 were formed after 1999, according to SNL Financial.***
>
> ***Still, economists say, the contraction represents an enduring threat to capital, lending and the economy.***

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> ***"When we step back and look at this financial disaster 10 years from now, the destruction of capital in our economy as a result of what we've endured will be the single greatest lasting impact on recovery and how the economy performs in the future," says Howard Headlee, president of the Utah Bankers Association.***
>
> ***[...]***
>
> ***Since 2008, the industry's assets have shrunk by 4.5%.***
>
> ***"If you reduce the amount of assets at a bank, it means they make fewer loans, and that has a negative impact on the economy," says Richard Bove, a bank analyst at Rochdale Securities in Lutz, Fla.***
>
> ***From small towns like Rockford, Ill., to Miami, the banks' disappearance means not only cutbacks in lending but fewer banking choices, lower interest rates on savings accounts, and lost jobs.***
>
> ***The recession and collapse of the housing bubble have cut bank-industry employment by 188,000 jobs, or 8.5%, since 2007, according to FDIC data. Failures alone have cost 11,210 jobs, or 32% of the employees at failed banks, according to FIG Partners, an Atlanta investment firm that specializes in the banking industry.***

I made the point in connection with the 2009 failure of Charter Bank in New Mexico that what often gets lost in this quest to ensure the "survival of the fittest" (or "biggest," or "most politically well-connected," or [*insert irritating exception category here*]) is the fact that mowing down thousands of small banks eliminates thousands of jobs those banks provide. It's nice that some reputable journalists have taken notice, although that won't matter a fig to people whose primary motivator in life is retiring with a vested government pension. Still, a lot of the laid off bank workers may not only swell the rolls of those needing unemployment benefits and other forms of public assistance, they might also end up as bitter voters at the next election who understand the difference between small and large banks and how the federal government and the political class treats the two banking segments. That's just a guess, but based upon anecdotal evidence, it may be a correct one.

Smith and Seidel give space to the views of contrarians. Among the points they raise are:

- The overall economic impact of bank failures has been "muted" because, thus far, there have been enough buyers.
- The number and rate of failures have, thus far, not been sufficient to have a large "macro-economic effect."
- Banks that fail are almost always constrained from lending, while the acquirers are better capitalized and able to lend.

However, the authors close with the observation that the end result of this consolidation appears to be that the big will get bigger.

> ***Bank of America, J.P. Morgan Chase & Co. and Wells Fargo hold 33% of all U.S. deposits, up from 21% in 2006, according to SNL Financial. That gives them more market power to squeeze out smaller competitors.***

I've also seen statistics (not cited by the authors) that the four largest banks completely dominate the residential loan origination business in

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banks completely dominate the residential loan origination business in this country. Little guys are finding little elbow room at that table.

Earlier this year, I heard James Lockhart, former head of the FHFA (and now a member of Wilbur Ross' team) interviewed on one of the cable business news channels, and he stated that this country didn't need 8,000 "little" banks, it needed 50 large regional banks. So, heck, why stop at 5,000 when 50 appears to be the optimal number for some eggheads?

If you think that result would be bad for the economy and for consumers, you'd better get off your duff and do something about it, because the train has left station and it's rolling down the tracks, gathering speed by the day.

09:36 PM in Capital, Conservatorship/Receivership, Employment, FDIC, Lending, Mergers and Acquisitions, The Economy | Permalink | TrackBack (0)

October 04, 2010

Public's TARP Tantrum Survives TARP's Death

Although the TARP program officially ends today, the Wall Street Journal's Deborah Solomon and Neftali Bendavid contend that Joe Sixpack and Mama Grizzly remain madder than wet hens over the program.

> ***Lawmakers who voted for TARP are fighting for their political lives. Bailout anger has all but ruled out the chance of federal intervention in the foreseeable future. The Federal Reserve has seen its independence threatened. And the Obama administration's ability to respond to the economic crisis has been constrained.***
>
> ***"This whole event can have political implications for 30 years," says Kenneth Rogoff, a Harvard University economist and expert on financial crises.***

Although TARP was designed to prevent a collapse of the country's (and, perhaps, the world's) banking system, to most folks it "has come to symbolize what some voters say they loathe about the wider bailout and, to a large extent, Washington: expansive government power, money spent to help Wall Street, and an unwillingness by policy makers to let people pay for their own mistakes." A lot of people want others to "pay for their own mistakes" unless that payment causes them, personally, to miss a daily does of a Quarter Pounder (with cheese), a large order of fries, and a liter of Cherry Coke. Then, by god, you can not only bail "the others" out, but make sure you give me a boatload of cash, as well. Not all, but some of the anger against TARP seems to flow from the fact that it bailed out "fat cats" and not "me." Again, in this country that was (as Nancy Pelosi contends) "founded on diversity" (although you'd look long and hard to parse the "diversity" among The Founding Brothers), painting people's motivations with a broad brush is a mistake. Nevertheless, enthusiasm for the desire to "let free markets take their course" seems to wax and wane depending on whose ox is being gored and/or whose pockets are being lined.

As I said around the time TARP was adopted, it was intended as a temporary, extraordinary measure to stave off a complete meltdown of the economy. As the Wall Street Journal article's authors (and others) point out, it did just that and is likely to cost the taxpayers relatively little in light of what it achieved.

> ***The anger against it, paradoxically, takes no heed of the fact that TARP, along with the broader government rescue efforts, has been arguably a success. It will ultimately cost far less than the initial $700 billion price tag that stunned a nation. Major banks are profitable and can raise capital.***

Colorado Division of Real Estate

FDIC - Federal Deposit Insurance Corporation

FFIEC - Federal Financial Insitutions Examination Council

FinCEN - Financial Crimes Enforcement Network

FTC - Federal Trade Commission

NCUA - National Credit Union Administration

OCC - Office of the Comptroller of the Currency

OTS - Office of Thrift Supervision

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THE DAILY CAVEAT

> ***Credit spreads—a key measurement of risk—are down to pre-crisis levels.***
>
> ***The White House now projects TARP will lose at most $50 billion, down from $105 billion projected earlier this year. Privately, Treasury Department officials say the U.S. may not lose a dime, and could ultimately make money depending on how some investments fare, in particular American International Group Inc. and General Motors Corp. In a $14 trillion economy, $50 billion is less than 1% of economic output.***
>
> ***"The incredible irony here is that TARP probably succeeded wildly beyond anybody's imagination," said Alan Blinder, a Princeton University economist who co-authored a paper crediting the administration's economic policies with preventing a second Great Depression. "Suppose the original TARP bill had been to spend $50 billion to avert a catastrophe. Would anyone have blinked?"***

While irony may work for David Letterman and John Stewart viewers, it rarely plays well in the political arena. People are upset about the abysmal economy and astronomical federal debt and they're looking for scapegoats. As Bob Bennett and Mike Castle found out, angry people tend to make their voting decisions using their endocrine systems, not their cerebrums. Facts simply don't matter. Expect this rage-against-the-(TARP)-machine theme to play out for some time to come. November looks like a time when a whole lot of shakin' is going to be going on in D.C. and in state governments across America. Apparently, some of it will be motivated by anger over a bailout that actually worked.

Here's more irony, for the few that love it: TARP would have been even more successful if it hadn't been bastardized after enactment by two White House administrations, Congress, and federal banking regulators, who decided to extend it to businesses for which it was not intended (AIG and GM, to name two), change the rules of the game after-the-fact (executive compensation restrictions), and deny participation to many community banks who actually could have used the capital to survive (which would have thwarted a hidden agenda to reduce the number of commercial banks by a quarter to a third).

09:36 PM in Banking Law-General, Capital, Conservatorship/Receivership, Contracts, Current Affairs, FDIC, Federal Legislation, Life (In General), Politics, The Economy, US Treasury Department | Permalink | TrackBack (0)

October 03, 2010

Smoke and Mirrors

I'm not the only blogger bleating about loan repurchase risks.

Francine McKenna has been pounding the large audit firms for several years about their failure to catch the repurchase risk inherent in the business operations of large mortgage bankers like the defunct New Century and the merged-out-of-existence Countrywide Financial. She recently discussed the fact that although KPMG has settled litigation over the failures of New Century and Countrywide, it still faces litigation over Citigroup and Wells Fargo/Wachovia.She also mentions that Price Waterhouse Coopers faces similar risk with respect to its audits of Bank of America and JPMorgan Chase, both under heavy buyback pressure from Fannie and Freddie.

Francine's gone back and parsed previous public reports that estimate the potential buyback risk to banks like JPMorgan Chase and the quarterly reports that contain reserves for such losses, and thinks she smells the

stench of a gross mismatch.

> ***I went back and looked at the JPM Chase and Bank of America (BAC) 2009 Annual Reports for more clues.***
>
> ***From JPMorgan Chase:***
>
> > ***Page 241: At December 31, 2009 and 2008, the Firm had recorded repurchase liabilities of $1.7 billion and $1.1 billion, respectively. The repurchase liabilities are intended to reflect the likelihood that JPMorgan Chase will have to perform under these representations and warranties and is based on information available at the reporting date. The estimate incorporates both presented demands and probable future demands and is the product of an estimated cure rate, an estimated loss severity and an estimated recovery rate from third parties, where applicable. The liabilities have been reported net of probable recoveries from third-parties and predominately as a reduction of mortgage fees and related income.***
> >
> > ***2009 compared to 2008, page 66: Noninterest revenue was $12.2 billion, up by $2.8 billion, or 30%, driven by the impact of the Washington Mutual transaction, wider margins on mortgage originations and higher net mortgage servicing revenue, partially offset by $1.6 billion in estimated losses related to the repurchase of previously sold loans.***
>
> ***A reserve of $1.7 billion is much less than the $23.9 billion Compass Point Research and Trading estimated form the Wall Street Journal as JPM"s potential liability to the Federal Home Loan Banks alone, not including claims by Fannie Mae and Freddie Mac.***
>
> ***From Bank of America:***
>
> > ***The Corporation records its liability for representations and warranties, and corporate guarantees in accrued expenses and other liabilities and records the related expense in mortgage banking income. During 2009 and 2008, the Corporation recorded representations and warranties expense of $1.9 billion*** *and $246 million. During 2009 and 2008, the Corporation repurchased* ***$1.5 billion and $448 million of loans from first lien securitization trusts under the Corporation's representations and warranties and corporate guarantees and paid $730 million and $77 million to indemnify the investors or insurers. In addition, during 2009, the Corporation repurchased $13.1 billion of loans from first lien securitization trusts as a result of modifications, loan delinquencies or***

> ***optional clean-up calls.***
>
> ***Bank of American admits "representations and warranties expense" as well as losses of $1.5 billion for repurchases of loans from first lien securitization trusts under their representations and warranties and corporate guarantees. In addition, they'd already repurchased an additional $13.1 billion based on mods, delinquencies and other "clean-up".***
>
> ***However, I can't easily see anywhere in either bank what the actual reserves are for estimated future liabilities and how they come up with a number given the total loans sold by type and the current claims by various parties. I think it's time for someone, perhaps the SEC, to demand more detailed disclosure about reserves for repurchase risk.***

She also wonders how Deloitte can sign off on entities who are involved in both sides of the buy-back controversies.

> ***Can PwC, in good faith, honestly sign off on financial statements on both sides of the disputes between the FHLBs and Freddie Mac and several PwC bank clients where completely different estimates of these liabilities are submitted?***
>
> ***I can understand judgment and leave some room for disagreement in a legal dispute as opposed to the valuation of an individual security. But, in the end, the quality of the documentation, the quality of the underwriting, the level of potential fraudulent documentation and the collectibility of the loan based on accuracy of the borrower ratings assigned at origination must all be relatively easy to ascertain on a comparable basis. These factors ultimately drive the value of the asset.***
>
> ***A loan doc is what it is. If it exists, that is.***
>
> ***The auditors have been helping the banks pull rabbits out of their hats for some time now. But isn't it about time we jump on the issue of audit firms behaving like Switzerland to protect their own self-interests? There are hundreds of millions of reasons in New York alone for PwC to stay neutral and to allow balance sheet "window dressing" via manipulation of reserves. But what does that say about the integrity of the financial information published by these banks?***
>
> ***Shareholders and other stakeholders will suffer greatly when the the banks eventually "surprise" us with the huge losses.***

Strong stuff. Good stuff. Definitely worth a read.

Where a the federal banking regulators on these issues? Oh, that's right, we're talking about too-big-to-fail banks and audit firms. Similar facts involving a community bank and regional or local audit form would have had serious adverse supervisory consequences for them both long before this point.

09:59 PM in Accounting/Auditing, Capital, Lending, Litigation, Mortgage Banking, Risk Management
| Permalink | TrackBack (0)

September 30, 2010

Unlike Love, Banks Aren't Lovelier The Second Time Around

The Denver Business Journal's Renee McGaw discusses a quirky result of the recent meltdown in the community banking sector: a number of the banks that have hit the skids and are under regulatory enforcement agreements or orders were started and run by bankers who made a bundle with their first bank and we're trying to replicate their previous success.

> ***An impressive number of the regulatory orders signed so far this year involve second-time-around banks whose founders fared very well with previous banks, in some cases selling them for tens of millions of dollars in the early 2000s. But regulators have signaled concern about their second incarnations.***

According to professional recruiter Tim Pendergast, there's a certain irony in all this.

> ***“What’s ironic is that not only did these investors try to duplicate the same business model a decade later, but many hired back the same people and used the same or very similar bank names in round two.”***

I don't see it as much ironic as unfortunate. As Ms. McGaw points out, most community banks have traditionally made much of their money in an area where they seem to be able to compete with their bigger brethren: commercial real estate. As some bank consultants have opined with perfect 20/20 hindsight, that made them vulnerable when the subprime mortgage bubble popped and the resulting domino effect cratered all real estate prices, including commercial real estate. If only these bankers had possessed the foresight that so many armchair quarterbacks seem to possess in 2010! If only they had foreseen the inevitability of the worse economic recession since the 1930s, they wouldn't have concentrated so heavily in commercial real estate, but would have diversified into C&I (whoops, also taking a beating) or "safe" investments like FNMA preferred stock (whoops, also the cause of many banks taking it the shorts) or AAA mortgage-backed securities ('nuff said)!

There's no question that a number of banks failed to diversify their asset base suffciiently. It's also true that no one expected the debacle we're now wallowing in, other than a few contrarians who went short and got rich and (according to at least one of my correspondents) regulatory Chicken Little's whose warnings were ignored and/or actively suppressed. The rest of us idiots who were actually in the arena slugging it out might have been uneasy, but never saw the train that hit us.

I'm sure a number of these "replayers" wish they had a chance to "rewind," but that's not how life operates, is it? On the other hand, as Ms. McGaw points out, merely because a bank operates under an enforcement order doesn't mean it's not going to make it out of the swamp and onto dry land eventually. What it does mean is that it won't be repeating its past mistakes. How any of these banks are going to make money in an economy like this one is going to be a challenge, regardless of asset concentration or diversification. "Don't make commercial real estate loans" is the easy part. "What's the alternative in this economy?" is the tough nut to crack, whether or not this is your second time around.

P.S. A community bank CEO lets his inner snark run free.

09:28 PM in Commercial Lending, Compliance, Lending, Real Estate, Risk Management, The Economy | Permalink | TrackBack (0)

September 29, 2010

Overdraft Rules' Impact Overblown?

According to an article in yesterday's American Banker (*paid subscription required*), both banks and consumer advocates are stunned (STUNNED I Tell Ya'!) that as banks have been forced to make consumers "opt in" to overdraft protection (as opposed to just automatically signing them up unless they affirmatively "opt out"), it appears that most consumers are choosing to participate in the much-maligned protection. Banks have been fearful, and consumer advocates jubilant, at the prospect that consumers would likely refuse to opt-in, thereby saving themselves (and costing the banks) BILLIONS and BILLIONS of dollars in overdraft fee income.

This may mean that banks have been winning (and consumer advocates losing) the marketing war for the soul of consumers. I guess we'll have to give the devil her due.

> ***The final results are not in yet, but anecdotal reports and data suggest that the expected declines in overdraft business will probably be shallow.***
>
> ***If the final numbers bear out this initial impression, banks can breathe a sigh of relief and keep doing exactly what they did before. They might also take the opportunity to figure out how industry and consumer advocates alike underestimated customer demand for overdraft.***
>
> ***"The American consumer wants overdraft service," said Mike Moebs of Moebs Services, which just released one of the most detailed — and, from banks' point of view, optimistic — studies of overdraft trends to date. "We've had a hard time trying to convince people of that."***
>
> ***The Moebs data, gathered from a survey of almost 2,300 banks, say opt-in rates ranged from 60% to 80%, with nearly all frequent overdrafters — that is, those with 10 overdrafts or more a year — giving their consent.***
>
> ***[...]***
>
> ***Leslie Parrish, the senior researcher at the Center for Responsible Lending in Durham, N.C., noted that neutrally worded surveys by Nielsen Co. and other such firms found greater skepticism toward overdraft coverage than such high enrollment rates would imply.***
>
> ***"I'm a little bit surprised because it runs so counter to what consumers have stated their preferences are," she said. The discrepancy between such surveys and actual opt-in rates may therefore in part be the result of a very hard sell, she said.***

While it may be the case that "good marketing" is the cause of this higher-than-expected opt-in trend, it may also be the case that consumers aren't as dumb and helpless as some on both sides of the fence assumed, and that, as I discussed last month, a number of them have intentionally used (and will continue to use) overdrafts as a form of short-term credit. It's expensive credit, but as the American Banker points out, it's a lot cheaper than a payday loan.

> ***"The American consumer, seven times out of eight, if you ask them, will tell you that the overdraft service is not a penalty," Moebs said. "They view it***

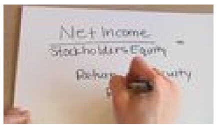
as a service. And they're confused as to why over half the banks and credit unions out there view it as a penalty."

Of course, even if that contention is true, it's also true that banks that offer lower fees will get more business from such consumers. Moreover, even steady users of overdrafts will not "cotton" to the types of "high-to-low" posting that have generated so much bad press (and class-action litigation). Therefore, while this change forced upon banks by the Federal Reserve's changes to Regulation E might be a "marketing opportunity," that opportunity can be squandered by attempts to boost overdraft fee income through "sharp practices" that milk customers for excessive fees.

09:56 PM in Compliance, Consumer Law-General, Federal Legislation, FRB, Litigation, Marketing | Permalink | TrackBack (0)

September 28, 2010

36% ROE: A Good Year's Work



If eyebrows were raised by last month's news that BankUnited is planning an IPO, those same eyebrows are likely near the top of the forehead with the more recent announcement that the OTS had approved the declaration of a dividend by the bank. The South Florida Business Journal obtained a copy of the bank's dividend application. Unfortunately for the Journal, the amount of the dividend was redacted from the copy the paper obtained through a FOIA request; however, the amount should be revealed when third quarter earnings are announced.

Inasmuch as the Journal's story also notes that the Bank's investors have earned a 36% ROE in a little over a year since they bought the remnants of the failed BankUnited in an FDIC-assisted transaction, some wags have suggested to me that not only will the dividend be hefty, but that the FDIC was "outfoxed" by the investment group's leader, the legendary bottom fisher Wilbur Ross. As I blathered when the IPO was announced, and as I again bloviate now, it's not the size of the return to the investors but the savings to the FDIC fund of doing the assisted transaction as opposed to liquidating the insolvent thrift (or accepting a competing bid) that's the critical consideration in determining whether this was a good deal for the FDIC. The fact that private equity players make a mint on this particular transaction is not that important to me nor should it be that important to bankers. Players like Ross (and his co-investors like Blackstone and Carlyle) win some and they lose some. If they win this one in a big way, good for them, as long as in doing so, they prevented the FDIC from suffering even greater losses on the disposition or liquidation of the "old" BankUnited. Also, they raised $875 million of new capital to dump into the banking system (and they're raising another $500 million in the IPO). The system needs fresh capital and these guys have it. They also saved some banking jobs by buying BankUnited.

Of course, we appear to be living in an era where a number of people think it ought to be illegal for capitalists to prosper, especially in the banking system, and even more especially where the downside risk is covered by the FDIC. I understand the reasons for that sentiment. I simply don't share it.

09:21 PM in Capital, Conservatorship/Receivership, FDIC, Mergers and Acquisitions, OTS, Stocks | Permalink | TrackBack (0)

September 27, 2010

Fax Machines: A Source of Civil Money Penalties?

Linda McGlasson at The Agency Insider blog had a smart post last week on the recent FDIC guidance on the information security risks of printers, copiers, and fax machines.

> ***It's not about the copies that are made or printed or sent by these machines, (although they can be considered a breach threat too if they fall into the wrong hands) but rather the stored data that poses a problem.***
>
> ***Consider: If you're at an institution that has done any upgrade to its copiers and printers within the last five years, then your current machines most likely are housing the hidden threat underneath the plastic cover -- a hard drive that copies and keeps records of every single copy made on the copier.***
>
> ***Yes, a hard drive can hold a copy of every single copy and the drive continues to write until it is full, and then the new data writes over the old copies. If that hard drive leaves the institution or is accessed, this is a violation of privacy under GLBA. Try explaining how that data made it into the hands of someone who wasn't supposed to see it. Or how after a copier was sent back to the seller for servicing or because its lease was up, a data breach was traced back to your institution -- specifically to that machine.***

Banks should have already addressed this issue as part of their information security program that is mandated by the Information Security Guidelines adopted by the FFIEC pursuant to the Gramm-Leach-Bliley Act. The hard drives of these machines should be treated in the same way (and protected and disposed of in the same way) as any other computer hard drive that sits on an employees desktop or is ported about in a laptop, netbook, I-pad, mobile phone, etc. The fact that the FDIC decided that it should issue specific guidance on the topic means that its examiners have discovered a potential "hole" in this respect at more than one bank.

Linda offers some common sense steps that banks should take to address and mitigate these risks:

- change the passwords from the default on copiers and the multi-function printers.
- turn off all the things you don't want and check that the data and fax modems are separate (so you won't run into the problem of having a modem linked in, looking at the records that only a select few are supposed to see in your institution).
- add the manufacturer's security kit that encrypts information on the copier. The kit also shreds each copied document by overwriting the image after it's printed.
- adopt a written policy on the handling of copies, faxes, printed material or stored data, including their secure disposal (if you don't already have one).
- adopt a written policy on the handling and disposal if data on these machines' hard drives.

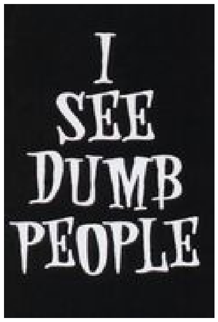
This is not only good business practice, but, as Linda also discusses, will protect both the institution ad its officers and directors from potential civil money penalties for violation of the requirements of the G-L-B Act.

You may think you've got bigger fish to fry than sweating this "small stuff," but a tiny bump can trip you up. Check your information security policies and make certain this "small stuff" is addressed, whether or not the FDIC is your primary federal regulator.

09:46 PM in Banking Law-General, Compliance, FDIC, FFIEC, Privacy, Risk Management, Web/Tech | Permalink | TrackBack (0)

September 26, 2010

America's Bank's Bozo Behavior Bites Another Consumer's Behind



I've been blogging about incidents over the last couple of years that demonstrate Bank of America's astounding practice of foreclosing upon and/or seizing homes upon which it has no liens. Of course, this piss-ant blog isn't going to motivate a Mastodon like the mighty B of A to change its ways, but after a while, you'd think all of the bad publicity in the main stream media about this repeated pattern of dysfunctional behavior might motivate even the dull-normals who run the foreclosure arm of the bank that serves the Great Horned God to understand that foreclosing on the wrong homes might not make the bank the poster child for consumer-friendly marketing. Apparently, however, nothing penetrates their armor of ignorance.

In June, we chronicled the sad tale of one Nancy Willmes, who didn't get the bank to back off of its foreclosure on her house (a house she bought for cash and on which Bank of America did not have a line) until a local television station's consumer reporter started pursuing the story. At that point, the bank suddenly blamed the whole affair on a "system error." Yeah, the *entire* system, apparently. In the June post, we linked to previous stories of Bank of America's foreclosure *faux pas* that were disturbingly similar. Last week, The Consumerist blog brought to a wider audience another incident in which a cash buyer found his home foreclosed upon by B of A and that proves that bank is still going about its merry way of punishing the innocent. As outlined in a story in the Fort Lauderdale Sun Sentinel, Jason Grodensky of Ft. Lauderdale, Florida bought a house for cash, didn't borrow from B of A, B of A didn't otherwise have a valid lien on the house (in fact, the sale to Mr. Grodensky should have extinguished the bank's lien on the house), and yet B of A managed to foreclose on the house and transfer tile, all without the owner having any idea what was going on.

Defenders of the bank and similar foreclosing lenders who've made similar mistakes claim the process is complicated, what with the mess the market made of the loan securitization paper trails. Nevertheless, even if you were to concede the lame argument that "mistakes happen," there is no defense to the complete stonewalling and imperviousness to facts that are demonstrated when the errors are pointed out to the bank and its counsel. That stonewalling continues until the main stream press takes an interest.

> ***Grodensky said he spent months trying to figure out what happened but said his questions to Bank of America and to the law firm Florida Default Law Group that handled the foreclosure have not been answered. Florida Default Law Group could not be reached for comment, despite several attempts by phone and e-mail. Grodensky said he has filed a claim with his title insurance company, but that, too, has not resulted in any action.***
>
> ***It wasn't until last week, when Grodensky brought his problem to the attention of the Sun Sentinel, that it began to be resolved.***
>
> ***"It looks like it was a mistake in communication between us and the attorneys handling the foreclosure," said [Bank of America spokeswoman Jumana] Bauwens.***

There. Was that so hard? You screwed up. Let's put aside the fact that defense attorneys claim that B of A and other servicers screw up in the

same or other ways as often as Mahmoud Ahmadinejad tells a lie. To simply not respond to a homeowner who claims that you foreclosed on a house on which you didn't have a lien and, as was the case with Ms. Willmes, ignore documentary evidence of this fact presented by a reputable title company, is simply wrong from so many perspectives. Moreover, as is evidenced by this blog post and the main stream media stories to which it links, it's the dumbest marketing move this side of Rod Blagojevich's turn on *The Apprentice*.

This story highlights one the many, many reasons to bank only with community banks. Like Rhett Butler, the bottom line for the big boys is that they frankly don't give a damn.

09:36 PM in Lending, Life (In General), Litigation, Marketing, Real Estate | Permalink | TrackBack (0)

September 23, 2010

ICBA Goes Off The Rails

ICBA CEO Camden Fine has finally admitted what many of us have suspected for some time: he's out of his mind.

> ***Albert Einstein defined insanity as doing the same thing over and over again and expecting a different result. Given that definition, to many observers ICBA's constant calls for more reasonable and balanced field examinations for community banks might appear insane.***
> ***After numerous and repeated private meetings and public testimony in Washington on this crucial issue over the past three years, community bankers continue to face an overly stringent regulatory environment even as policymakers plead with community banks to boost lending to consumers and businesses.***

So what does Camden propose to do now?

You guessed it: keep calling on the regulators to listen up and lighten up.

> ***Einstein also said that the only things that are infinite are the universe and human stupidity, and he wasn't so sure about the universe. We need a smarter approach to bank exams if we want to keep the fragile economic recovery from reversing course. It doesn't take an Einstein to figure that out. In a fair exam environment, community banks can give small businesses the loans they need and help America get back to work.***

I don't know, Cam. Based upon my own conversations with federal bank regulators, I think that you have as much chance of them heeding your call for "fair exams" as I have of successfully driving the lane on LeBron James.

Then, again, perhaps sanity is grossly overrated.

09:34 PM in Compliance, FDIC, FRB, Life (In General), OCC, OTS, The Economy | Permalink | TrackBack (0)

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